



The Vita Viewpoint Important Information for Decision Makers

Heroes Earnings Assistance and Relief Tax (HEART) Act of 2008

Overview of Legislation

H.R. 6081 (also known as HEREOS or HEART Act) was signed into law on June 17, 2008 by President Bush after being approved by the House of Representatives by a 403-0 vote. The legislation is effective immediately and provides tax benefits for certain members of the military. The bill is highly comprehensive and affects many areas of the tax law. Following are highlights that relate to employee benefit plans.

Highlights

- ***Health FSA Distributions.*** The Act amends Code § 125 to allow distributions of unused health FSA amounts to reservists called to active duty. The distribution must be a “qualified reservist distribution” which means that the employee’s call to active duty must be for a period of over 179 days or for an indefinite period of time and the distribution must be made between the date of the order/call and the last date that reimbursements from the health FSA are allowed (i.e. claims submission deadline). The Act states that the amount of the distribution can be “all or a portion of the balance in the employee’s account”. Employer plans must be amended in order to allow this distribution.
- ***Benefits for Disabled Individuals and Survivors.*** The Act permits 401(k) plans and other qualified retirement plans to treat individuals who die or become disabled while performing qualified military service as if the individual resumed and then terminated employment on the applicable date of death or disability. Any additional benefit accruals must be given to the individual or an individual’s survivors. This provision applies to deaths or disabilities occurring on or after January 1, 2007.
- ***Differential Wage Payments.*** This term means any payment made by an employer to an individual while the individual is performing service in the uniformed services. A 401(k) plan or other qualified retirement plan must treat such an individual as an “employee” and must treat the differential wage payment as “compensation” when applying the Code’s rules to a plan. Differential pay also must be treated as “wages” subject to income tax withholding. This provision is applied to all monies paid after December 31, 2008.
- ***Withdrawals from Retirement Savings Plans.*** The HEART Act indefinitely extends the sunset period by which a military reservist ordered or called to active duty for more than 179 days or for an indefinite period of time can take a distribution from a 401(k) or 403(b) plan and not be subject to the 10 percent penalty tax for early withdrawals. This assumes that the distribution is made during the period of active duty. It also states that from the date that the reservist’s active duty ends, the individual would have two years to re-contribute the monies to an IRA on an after-tax basis if he or she chooses.

For questions or additional information, please contact Vita Benefits Group at (650) 968-8811.